

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT DARRELL GWIN,

Defendant.

CASE NO. 2:01-CR-00356-MJP

ORDER ON MOTION FOR
REDUCTION OF SENTENCE

The Court, having received and reviewed:

1. Petitioner's Pro Se Motion for Reduction of Sentence (Dkt. No. 94)

2. United States' Response to Defendant's Motion (Dkt. No. 96)

and all attached declarations and exhibits, makes the following ruling:

IT IS ORDERED that the motion is DENIED.


Defendant seeks a reduction in the sentence assessed against him following a jury verdict of guilty on three counts: possession with intent to distribute cocaine, possession of a firearm as a convicted felon and carrying a firearm in commission of a drug trafficking crime. Defendant bases his request on the argument that the 327-month term to which he was sentenced was based

1 on a now-discredited disparity between possession of crack cocaine and possession of powder
2 cocaine.

3 The Government is correct in its response: a review of the presentence report in this case
4 makes it clear that Defendant's sentence was not based on USSG § 2D1.1 (which would render
5 him eligible for a reduction), but rather on the Career Offender Guideline. As a result, the
6 Court's decision is bound by United States v. Wesson, 583 F.3d 728, 731 (9th Cir. 2009), which
7 holds that a defendant sentenced as a Career Offender is not eligible for a reduction in sentence
8 as a result of the change to USSG § 2D1.1 related to crack cocaine. Because the guideline range
9 under which Defendant was sentenced is not one that was reduced by an amendment to the
10 Sentencing Guidelines, Defendant's sentence falls outside of 18 U.S.C. § 3582(c)(2) and this
11 Court is without jurisdiction to grant his request.

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13 The clerk is ordered to provide copies of this order to all counsel.

14 Dated March 29, 2011.

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17 Marsha J. Pechman
United States District Judge
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